1998. SWBT should file a follow-up affidavit once the records are available in San Antonio. The Commission must have proof that the records will remain available in San Antonio pursuant to the FCC's order;

5. SWBT shall post on the internet a written description of the asset or service transferred along with the terms and conditions;
6. There is insufficient information to evaluate if transactions are fairly and accurately valued. SWBT shall provide such additional information, so the Commission can determine which of the posted services and assets would be available on an equal pricing basis to a competitor of SBLD;
7. Transactions between February 1996 and the date of approval to initiate interLATA services shall be disclosed and made subject to "true-up;"
8. SWBT shall provide additional information to enable the Commission to evaluate if transactions are arms-length between the affiliates;
9. SWBT shall limit its use of "CONFIDENTIAL" and "PROPRIETARY" classifications to those transactions that meet the FCC guidelines for such protections;
10. The record shall be developed further as to SWBT's practices regarding the use of "CONFIDENTIAL" and "PROPRIETARY" restrictions on documents. If contracts between SWBT and its interLATA affiliate are improperly so marked, then, the Commission's position is that SWBT does not meet the public disclosure requirements of Section 272;
11. The audit report to Texas must report on transactions from all three SBC BOCs, summarizing the total support services from each BOC, reporting the specific services received by the long distance affiliate from each BOC, and reporting on the allocation of expenses within the SBCS organization by subsidiary and by d/b/a title;
12. The Commission has concerns regarding marketing, but recognizes the FCC's decision in BellSouth/South Carolina. The Commission, nonetheless, has concerns that the strong recommendation of its affiliate by SWBT and the warm-hand-off to the affiliate would not pass any arms-length test. If a customer truly does not readily state a long distance company choice, then random assignment of a carrier is preferable.

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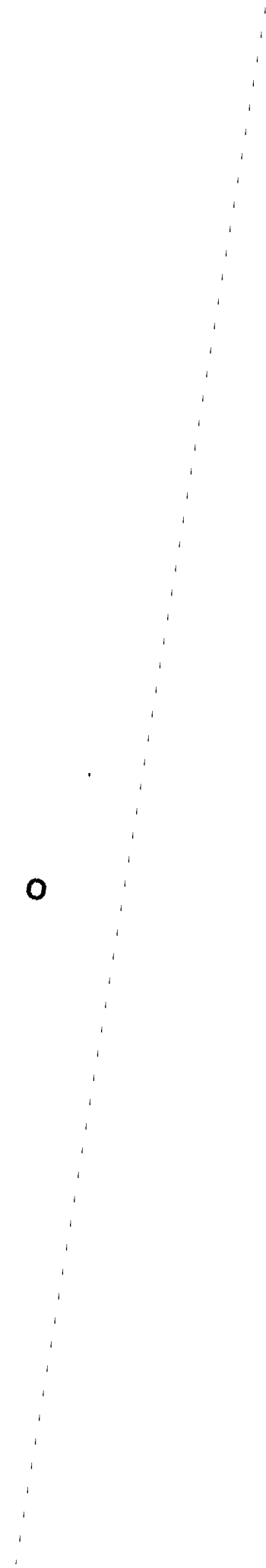

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In the Matter of	)	
	)	
Application of BellSouth Corporation,	)	CC Docket No. 98-121
BellSouth Telecommunications, Inc.	)	
and BellSouth Long Distance, Inc.	)	
for Provision of In-Region, InterLATA	)	
Services in Louisiana	)	

Exhibit O:
Petition of Bell Atlantic-Pennsylvania, Inc. for a Determination of Whether the Provision of Business Telecommunications Services is Competitive under Chapter 30 of the Public Utility Code, Pennsylvania Public Utility Commission Docket No. P-00971307, Recommended Decision (July 24, 1998)

BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION

PETITION OF BELL ATLANTIC - PENNSYLVANIA, INC.	:	
For a Determination of Whether the Provision of Business Telecommunications Services Is Competitive Under Chapter 30 of the Public Utility Code	:	Docket No. P-00971307

RECOMMENDED DECISION

PUBLIC VERSION
[PROPRIETARY MATERIAL HAS BEEN REMOVED]

Before
Michael C. Schnierle
Administrative Law Judge

July 24, 1998

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HISTORY OF THE PROCEEDING

Bell Atlantic-Pennsylvania, Inc. ("BA-PA") filed this Petition for a Determination that Provision of Business Telecommunications Services is a Competitive Service Under Chapter 30 of the Public Utility Code on December 16, 1997. Several parties filed answers and motions to intervene, including the Office of Consumer Advocate ("OCA"), the Office of Small Business Advocate ("OSBA"), the Office of Trial Staff ("OTS"), AT&T Communications of Pennsylvania, Inc. ("AT&T"), MCI Telecommunications Corporation and MCImetro Access Transmission Services, Inc. (collectively "MCI"), Teleport Communications Group ("TCG"), Sprint Communications Company L.P. ("Sprint"), ATX Telecommunications Services, Ltd. ("ATX"), the Central Atlantic Payphone Association ("CAPA"), Commonwealth Telecom Services, Inc. ("CTSI"), the Pennsylvania Cable & Telecommunications Association ("PCTA"), the Internet Service Providers ("ISP"), Connectiv Communications, Inc., and Sprint Communications Company L.P.

AT&T filed a motion to dismiss BA-PA's petition on January 5, 1998 due to the broad nature of BA-PA's petition. On January 5, 1998, CAPA filed a partial motion to dismiss the section of BA-PA's Petition which requested competitive classification of Payphone Network Services. BA-PA filed an answer to both motions to dismiss on January 15, 1998.

A prehearing conference was held in this case on February 5, 1998. During the conference, I denied AT&T's and

CAPA's motions to dismiss. Also, a schedule was established based on a 270 day time frame.[1]

On February 11, 1998, BA-PA filed its written direct testimony.

On February 12, 1998, BA-PA filed a petition for Commission review and answer to a material question in an attempt to have the Commission require that the case be heard within 180 days rather than 270 days. On February 19, 1998, several parties filed responses opposing BA-PA's petition, including MCI, AT&T, CAPA and OCA. On March 30, 1998, the Commission issued an Order finding that 180 day time limit in 66 Pa.C.S. §3005(a) for concluding a Petition is directory and not mandatory. Accordingly, the Commission ordered that the parties proceed in accordance with the schedule set forth in my Second Prehearing Order of February 20, 1998.

On March 3, 1998, BA-PA applied to me for subpoenas to either take depositions or for the production of documents to be served on all non-party Competitive Local Exchange Companies ("CLECs"). The purpose of the subpoenas was to permit BA-PA to obtain evidence regarding the presence and viability of other competitors (for business telecommunications services), including market shares, the availability of like or substitute services, the relevant geographic area, and the ability of other entities to offer services or activities at competitive prices, terms and conditions. (Application at ¶¶ 3-4). Through a series of three

[1] The schedule and decision regarding the motions to dismiss were included in my Second Prehearing Order of February 20, 1998.

orders, I approved BA-PA's request for subpoenas, with the exception of 11 names withdrawn by BA-PA and one or more CLECs which provided BA-PA with information without the subpoena.

All other parties filed their direct testimony on March 27, 1998. BA-PA filed rebuttal testimony on May 6, 1998. Other parties filed surrebuttal testimony or outlines of oral surrebuttal testimony between May 15 and May 20, 1998. BA-PA filed outlines of oral surrejoinder testimony on May 26, 1998.

Public input hearings were held in Williamsport on March 16, 1998 and in Scranton on March 17, 1998. Thirteen individuals representing businesses, schools, local agencies or associations testified regarding BA-PA's Petition.

Hearings were held on May 27-29 and June 1-2. Overall, twenty witnesses were presented by several parties, including five witnesses for Bell Atlantic, four witnesses each for MCI and AT&T, two witnesses for TCG, and one witness each for OTS, OSBA, OCA, CAPA, and CTSI. The hearings resulted in a transcript of 1,708 pages of oral testimony; 83 exhibits, including statements of written testimony were admitted into the record.

DISCUSSION

I. Introduction.

By this petition, BA-PA seeks to have the Commission declare competitive all telecommunications services provided to businesses throughout BA-PA's service territory. This would have the effect of eliminating most regulatory oversight of 84 separate services that are identified in BA-PA St. 1, Appendix B.

Under BA-PA's view of the case, if this petition is granted, with respect to each of these services, BA-PA will be allowed to raise or lower rates as it desires. BA-PA may also impose new terms and conditions on the use of these services, or may discontinue offering these services. (Tr. 429-431, 462). BA-PA proposes to meet the imputation test of Chapter 30 by aggregating the revenues for all of these services. That is, a proposed rate for a deregulated BA-PA business service would pass the imputation test as long as the revenues for <u>all</u> business services exceed the revenues that BA-PA would realize from the sale of the associated basic service functions to its competitors. Thus, BA-PA would be free to offer some services at below cost as long as others were priced above cost. According to BA-PA, even a price of zero on a specific service would not flunk this test. (Tr. 339).

When I first saw BA-PA's petition in this case, I was surprised. It seemed to describe a telecommunications market with which I am completely unfamiliar after hearing many cases, over the past two and one-half years, that specifically relate to telecommunications deregulation and competition. I could not begin to imagine how BA-PA planned to establish that all business telecommunications services are competitive throughout its entire service territory. I expressed that opinion to the parties during the prehearing conference. (Tr. 15-16).

Having now presided over this case from the prehearing conference through briefing, I conclude that BA-PA has not come close to establishing the major fact that it must establish to prevail here, namely, that there is effective competition for

business services throughout BA-PA's service territory such that BA-PA would be unable to sustain price increases for its services. BA-PA's presentation on the issue of competitive presence does not withstand even the most cursory review. For this reason, I recommend denying this petition.

I also urged BA-PA to present evidence in support of partial relief (i.e., a grant of competitive status limited to certain services, customers, or geographic areas). (Tr. 17-18). BA-PA has not made such a presentation. As will be discussed further, BA-PA is now asking for partial relief based on certain record evidence, if full relief is not granted. For reasons that I will discuss, I also recommend that partial relief not be granted here.

Because I believe that BA-PA has failed to establish the primary fact that it needs to establish, I will not discuss in minute detail every argument made by the parties. I will, however, attempt to touch on more important issues that may be revisited in other cases in the future.

One other point is worth mentioning here. BA-PA's petition has one attractive feature. It presents an opportunity to bring about politically unpopular, but economically necessary, rate rebalancing under the guise of promoting competition. While this result may have something to recommend it, conditions in Pennsylvania are such that granting the petition now is likely to result in almost immediate rate rebalancing, but very little competition (which <u>might</u> serve to restrain rural rates) any time soon.

II. The Statutory Criteria.

This proceeding is governed by 66 Pa.C.S. §3005, which provides:

> **(a) Identification of competitive service.--** The commission is authorized to determine, after notice and hearing, whether a telecommunications service or other service or business activity offered by a local exchange company is a competitive service. A local exchange telecommunications company may petition the commission for a determination of whether a telecommunications service or other service or business activity offered is competitive, either in conjunction with a petition to be regulated under an alternative form of regulation or at any time after the granting of the petition. . . . In making the determination, the commission shall consider all relevant evidence submitted to it including evidence presented by providers of competitive services. In a proceeding to determine whether a telecommunications service or other service or business activity offered is a competitive service, the following shall apply:
>
> (1) The commission shall make findings which, at a minimum, shall include evidence of ease of market entry, including the existence and impact of cross-subsidization, rights-of-way, pole attachments and unavoided costs; presence and viability of other competitors, including market shares; the ability of competitors to offer those services or other activities at competitive prices, terms and conditions; the availability of like or substitute services or other activities in the relevant geographic area; the effect, if any, on protected services; the overall impact of the proposed regulatory changes on the continued availability of existing services; whether the consumers of the service would receive an identifiable benefit from the provision of the service or other activity on a competitive basis; the degree of regulation necessary to prevent abuses or discrimination in the provision of the service or other activity and any other relevant factors which are in the public interest. . . .

> (2) The burden of proving that a telecommunications service or other service or business activity offered is competitive rests on the party seeking to have the service classified as competitive.
>
> . . . .
>
> (e) **Additional Determinations.**--The commission shall determine whether local exchange telecommunications companies are complying with the following provisions:
>
> (1) The local exchange telecommunications company shall unbundle each basic service function on which the competitive service depends and shall make the basic service functions separately available to any customer under nondiscriminatory tariffed terms and conditions, including price, that are identical to those used by the local exchange telecommunications company and its affiliates in providing its competitive service.
>
> (2) The price which a local exchange telecommunications company charges for a competitive service shall not be less than the rates charged to others for any basic service functions used by the local exchange telecommunications company or its affiliates to provide the competitive service. Revenues from the rates for access services reflected in the price of competitive services shall be included in the total revenues produced by the noncompetitive services.

Thus, before any other issues may be addressed, it is first necessary to determine if the record supports findings favorable to BA-PA for each of the following criteria:

> 1. Ease of market entry, including the existence and impact of cross-subsidization, rights-of-way, pole attachments and unavoided costs;
>
> 2. Presence and viability of other competitors, including market shares;
>
> 3. The ability of competitors to offer those services or other activities at competitive prices, terms and conditions;

4. The availability of like or substitute services or other activities in the relevant geographic area;

5. The effect, if any, on protected services;

6. The overall impact of the proposed regulatory changes on the continued availability of existing services;

7. Whether the consumers of the service would receive an identifiable benefit from the provision of the service or other activity on a competitive basis; and,

8. The degree of regulation necessary to prevent abuses or discrimination in the provision of the service or other activity and any other relevant factors which are in the public interest.

III. Burden of Proof.

Pursuant to 66 Pa.C.S. §3005(a)(2), BA-PA, as the petitioner seeking a competitive declaration for all of its business telecommunications services, has the burden of proving the competitiveness of these services. BA-PA argues in its reply brief that although BA-PA bears the burden of proof of competitiveness, once the party with the burden of proof has introduced evidence which would support a finding in its favor, the burden of going forward swings to its opponents, citing Pa. Pub. Util. Com. v. Citizens Util. Water Co., 169 P.U.R. 4th 552 (1996). While BA-PA's comment is true as far as it goes, it stops short of acknowledging, as it must, that while the burden of going forward shifts, the burden of proof does not. It always remains on the party whose duty it is to establish a particular fact. Replogle v. Pennsylvania Electric Co., 54 Pa. PUC 528, 530 (1980).

In fact, to shift the burden of going forward, the party with the burden of proof must present a prima facie case in support of its claims. When a prima facie case has been established, the burden of going forward shifts. A prima facie case, however, is insufficient to win if the opponent produces evidence which is coequal to that produced by the party with the burden of proof. Replogle, 54 Pa. PUC at 530.

The Supreme Court has also determined that the party with the burden of proof must do more than just establish a prima facie case. The party with the burden of proof must meet that burden with evidence which proves its cause of action of such weight as to preclude all reasonable inferences to the contrary. In the case of a claim of overbilling by a utility customer, the Supreme Court stated:

> Whereas a litigant establishes a prima facie case by producing enough evidence to support a cause of action, the burden of proof is met when the elements of that cause of action are proven with substantial evidence which enables the party asserting the cause of action to prevail, precluding all reasonable inferences to the contrary. [Citations omitted.]

Burleson v. Pa. P.U.C., 501 Pa. 433, 437, 461 A.2d 1234, 1236 (1983).

Thus, BA-PA bears the burden of establishing facts necessary to support the required findings by substantial evidence.

IV. BA-PA's Case.

BA-PA's argument is support of its petition is set forth succinctly at pages 1 through 4 of its main brief:

> Chapter 30 of the Public Utility Code permits competitive classification "of a telecommunications service or business activity" where there is sufficient evidence of: the ease of market entry, the presence and viability of competitors (including market shares), the ability of those competitors to offer the service or activity at competitive prices, terms and conditions, and the availability of like or substitute services or activities are available throughout the relevant geographic area. The business telecommunications market in Pennsylvania today meets all these criteria - in fact, the growth of competition in this market is explosive and continues to accelerate. ` Bell Atlantic - Pennsylvania, Inc.'s ("BA-PA") petition should therefore be granted.
>
> Chapter 30 removed the legal barriers to entry into the local exchange market, and, by expeditiously implementing the local competition provisions of the federal Telecommunications Act, the Commission has removed the last significant economic barriers to entry. As a result, the pace of competition for all telecommunications services -- but particularly in the provision of business telecommunications services -- has accelerated dramatically in terms of competitors' geographic presence and rate of market share growth.
>
> Virtually all (94%) business access lines in BA-PA's service territory are served by a wire center where at least one local competitor is present. Three quarters (76%) are served by wire centers where a facilities-based competitor is located. Thus, BA-PA's competitors are present throughout the geographic area where business customers are found. The rapid growth of competition is also reflected in the increases in the minutes of use BA-PA has exchanged with CLECs, and the resold lines, unbundled loops, and ported numbers BA-PA has provided to CLECs. In fact, *every quantitative measure*

of competitive activity presented in this case shows dramatic, double-digit growth since this Petition was filed late in 1997. BA-PA's competitors are thriving by pursuing a strategy of offering comprehensive packages of telecommunications services to business customers. This permits them to make the most of two advantages they have over BA-PA. First, they can offer pricing plans that are tailored to customers' needs—discounts based on aggregate revenue or "free" local calling, for example. Second, they can enhance their offerings by including services BA-PA is not permitted to offer, such as interLATA and wireless services.

Large, medium, and even smaller-sized business customers (those who spend $10,000 annually on local exchange, intraLATA toll, and special services) have access to competitive "one-stop-shopping" alternatives *throughout* BA-PA's service territory, and have for many years. But the competitive activity is not limited to these customers. Competitors are providing competitive telecommunications packages to smaller businesses as well. **[PROPRIETARY MATERIAL REMOVED]**

The presence of competitors in nearly every wire center serving business customers, their viability as demonstrated by the robust growth in their market shares, their access to unbundled network elements, their ability to purchase BA-PA services at a discount for resale to aggregated customers, the competitiveness of their service packages, and customers' increasing demand for "one-stop-shopping" and tailored discounts, taken together, ensure that competition will constrain BA-PA's ability to raise prices for business telecommunications service above market levels

Despite the foregoing evidence of competition, the existence (if not the sufficiency) of which is largely undisputed, BA-PA's competitors allege that a variety of conditions constitute insurmountable "barriers to entry" which prevent CLECs from competing effectively with BA-PA. However, none of these purported "barriers" amount to anything more than inconveniences or the result of what can only be described as

> disingenuous regulatory posturing. Moreover, the competitors' protests that the obstacles to entry are insurmountable cannot be reconciled with the explosive growth in the market shares of competitors like **[PROPRIETARY MATERIAL REMOVED]** in just five months.
>
> In addition to demonstrating that the provision of business telecommunications service qualifies for competitive classification, BA-PA has shown that its provision of business services complies with the competitive safeguards and other requirements of Chapter 30. The only serious dispute relates to the level at which the imputation analysis should be performed. Both BA-PA's and AT&T's economic experts agreed, however, that imputation should be applied at the same market level that the competitive analysis occurs—here, all business telecommunications service provided throughout BA-PA's service territory. Imposing imputation at a more disaggregate or geographically-partitioned level will increase distortions inherent in Chapter 30's imputation standard, reduce BA-PA's ability to compete on the basis of price, and thus deprive business customers of the full benefits of competition.
>
> The record convincingly demonstrates that competition in the business telecommunications market is fully entrenched in Pennsylvania, at all customer sizes and all geographic areas. Granting BA-PA's Petition would further unleash the competitive pressure necessary to ensure that the full benefits of competition are available to all business customers. BA-PA's Petition should therefore be granted. (Footnotes omitted; emphasis in the original.)

The major premise of BA-PA's argument is that certain statistics show that there is viable competition for all kinds of business telecommunications services throughout all of its service territory in Pennsylvania, and that therefore the statutory criteria are met (i.e., because there is competition,

there must be competitors, there must be ease of market entry for all services, the competitors must be able to offer these services at competitive prices, terms and conditions, etc.). As we shall see, however, BA-PA's statistics tell much less than the whole story about the state of local telephone competition.

V. The Relevant Market.

BA-PA argues that the "relevant market" for the purpose of evaluating its petition is all business services throughout its entire service territory. All other parties oppose such a broad market definition. Aside from bare claims that telephone customers frequently want to buy "bundled service," that some of these "bundles" are substitutable for others, and that there are large customers with locations across Pennsylvania that would like to purchase telecommunications services for all their locations in one package, BA-PA has produced no credible evidence to support its proposed market definition. BA-PA has produced no evidence that any one of its competitors (or, for that matter, all of them combined) can offer the entire range of services for which it seeks competitive designation. It has offered no evidence to show the extent or nature of competition that it faces in particular geographic areas. It has offered no evidence to show how specific services available from its competitors may be substituted for BA-PA's services. (Tr. 327). It has offered no evidence of the specific needs of different classes of telecommunications customers.

While I am not unsympathetic to BA-PA's desire to be able to bid on large contracts with multi-location customers who

have diverse telecommunications needs, and while I might be convinced by an appropriate showing that BA-PA could be accorded more flexibility with respect to such contracts, BA-PA's petition goes well beyond providing it with flexibility for such customers. All of BA-PA's opponents argue that each of BA-PA's 84 services should be considered separately. While I do not necessarily agree that each service must be considered on its own, the fact that BA-PA has not attempted to show that particular services are competitive makes such a granular review impossible.

OTS argues that at least business local exchange service ("BLES") should be considered separately because it is a "protected service" under 66 Pa.C.S. §3002, and because BLES is a stand-alone service that accounts for approximately **[PROPRIETARY MATERIAL REMOVED]** of BA-PA's business telecommunications service revenue. (OTS M.B. at 11). I agree with these points, and also note that local exchange service is the cornerstone service for any provider of telecommunications services. It is unlikely that any provider of any local telecommunications service will render any optional or toll services (except for interLATA toll, which BA-PA cannot now render), unless it is first rendering local exchange service. Notwithstanding BA-PA's listing of 84 services, deregulation of BLES clearly is at the heart of this case. For these reasons, I conclude that local exchange service should be the focus of this discussion.

VI. Presence and Viability of Competitors.

When it filed its initial testimony, BA-PA made no effort to quantify the extent of competition that it faces at particular points within its service territory. Instead it relied on broad claims that there are numerous companies offering services to businesses, that many CLECs have been certificated, and more are awaiting certification, that there is a considerable amount of advertising by competitors, that competitors' market shares had experienced rapid growth in the recent past, and that competitors were installing fiber optic cables in large quantities, as well as switches. (See generally, BA-PA St. 1). While all of these factors are interesting, and perhaps entitled to some weight, they are not substitutes for data regarding the extent to which competitors are actually rendering service to different kinds of business customers in different areas of BA-PA's service territory.

Rather than addressing the statutory criterion of "market share," BA-PA has focused on the "growth" of its competitors' market shares. BA-PA's reliance on "growth" of market shares, as opposed to actual market shares, is comically transparent. Because BA-PA's competitors are starting out with market shares at or near zero, any growth will look huge simply because the starting number is small. Even BA-PA's "policy witness" agreed that a high rate of growth can simply reflect the fact that the starting market share was small. (Tr. 375).

BA-PA also conveniently neglects to state its own market share. For example, the data provided by BA-PA in

Appendix I to its main brief concerning the number lines served by competitors shows that competitors are serving approximately [PROPRIETARY MATERIAL REMOVED] lines.[2] However, BA-PA itself served [PROPRIETARY MATERIAL REMOVED] as of the beginning of this year. (OCA St. 1.0 at 21-22). Thus, BA-PA's competitors, despite their significant growth over the past two years or so, control about four percent of the business lines, as compared to BA-PA's 96 percent. Not one of BA-PA's competitors serves more than a de minimis amount of the BLES market.

Similarly, the traffic exchange data that BA-PA cites as allegedly demonstrating a high level of competition in the market looks impressive only if not compared to BA-PA's own traffic. BA-PA claims that it exchanged more than 1.3 billion minutes of billed traffic with CLECs during 1997. (BA-Pa St. 1.0 at 23). However, 1996 ARMIS data showed that BA-PA itself carried approximately 88 billion dial equipment minutes of local traffic. Thus, even without the growth in BA-PA's own traffic that undoubtedly occurred in 1997 over the previous year, the 1.3 billion minutes that BA-PA claims to have exchanged with CLECs is less than 1 1/2 percent of its own local traffic. (AT&T Stmt. 1.0 at 27-28).

Another statistic that BA-PA offered in support of its petition is a claim that "48 percent of the measurable expenditures made by Pennsylvania businesses on intrastate

---

[2] The validity of at least some of this data has to be questioned because one of the carriers counted is WinStar Wireless. It is not clear that it renders wireline service at all.

(interLATA, intraLATA and local) wireline and wireless business telecommunications services in BA-PA's serving area are for services provided by BA-PA competitors." (Emphasis supplied). (BA-PA St. 3.0 at 18). This is an impressive statistic, until you think about it for a second or so. Wireless service is not at issue here. InterLATA toll is not at issue here. IntraLATA toll has been subject to competition for longer than local service, and was subject to presubscription almost one year ago. This number says absolutely nothing about BA-PA's share of the revenues from BLES, which, as the OTS argues, is at the heart of this case.

The same witness who sponsored the 48 percent revenue figure also sponsored some two studies that purport to support BA-PA's claims. I will not dwell in depth on these. In my view they are no more credible as indicia of actual competition throughout BA-PA's service territory than are BA-PA's market share "growth" statistics. For example, in the second study, the participants were asked if they thought that BA-PA should be allowed to offer discounted pricing packages. It is no surprise, and of little evidentiary value to this proceeding, that almost 98 percent answered "yes" to that question; the only surprise is that a few survey participants answered "no." In general, I agree with the comments of parties such as OSBA (M.B. at 13-15) and MCI (M.B. at 11-13) regarding the invalidity of these studies.

One other comment needs to be made here. As discussed in the history of this case, BA-PA sought and received 60 to 70

subpoenas to obtain from non-party CLECs information regarding their operations in Pennsylvania. Despite this discovery, BA-PA has offered no more quantitative evidence regarding its competitors than it has cited in its main brief. BA-PA implies, at page 13 of its main brief, that it was less than successful in pursuing such information. To my knowledge, only one company, NEXTLINK, objected to the subpoenas. NEXTLINK eventually furnished at least some information, as evidenced by BA-PA's main brief. The lack of information offered by BA-PA on this critical issue, rather than evidencing lack of cooperation, evidences lack of competition. Moreover, if BA-PA did not have enough time to pursue sanctions against non-responding companies, or to analyze the information received, it has only itself to blame, because it has insisted on an accelerated schedule to this case while waiting until after it filed its direct testimony to even seek the subpoenas that it used to obtain competitor information.

The evidence submitted by BA-PA initially on this issue is woefully inadequate to establish that there is competition for its business services throughout its service territory. In its direct testimony, the OTS attempted to quantify the level of competition in each of BA-PA's wire centers. After OTS filed its direct testimony, BA-PA filed a study of its own that attempted to discredit the OTS study. These two studies, which have more to say about the level of competition throughout BA-PA's service territory, will be discussed below.

A. Methods of Competition.

Before discussing in detail the existence of competition throughout BA-PA's service territory, it is necessary to explore the kinds of competitors that BA-PA can face in any given market.

There are four basic ways that a competitor can take a customer from BA-PA:

1. The competitor can simply purchase BA-PA's service at the mandated discount for resale;

2. The competitor can lease from BA-PA the customer's loop and switch (the unbundled element platform, or the "UNE-P");

3. The competitor can lease from BA-PA the unbundled element ("UNE") loop;

4. The competitor can provide service over its own facilities, or by the use of special access, thereby precluding the need for either BA-PA's loop or its switch;

Each of these methods of competition has certain ramifications which require additional explanation. One ramification that I will not explore is the complaint of several parties that BA-PA's resale and UNE rates are too high. While this may be the case, the Commission has found those rates to be reasonable. I conclude that I must accept as valid the Commission's rulings on those rates for the purpose of this proceeding, because there was not sufficient time in the course of this case to explore in detail the reasonableness of those rates.